

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In the matter of:

Michelle Shearon,

Debtor. /

Case No. 03-71728-MBM

Chapter 13

Hon. Marci B. McIvor

OPINION DENYING GENERAL MOTORS ACCEPTANCE CORPORATION'S
MOTION FOR RECONSIDERATION

General Motors Acceptance Corporation ("GMAC") filed a motion for reconsideration of this Court's order sustaining the Debtor's objection to GMAC's proof of claim, which was entered in conjunction with an order modifying Debtor's Chapter 13 plan, on March 9, 2004. For the reasons set forth below, GMAC's motion for reconsideration is denied.

I.

JURISDICTION

Bankruptcy courts have jurisdiction over all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11. 28 U.S.C. §§ 1334 and 157. Core proceedings include proceedings to allow or disallow claims and to confirm or modify plans. *Id.* § 157(b)(2)(B) and (b)(2)(L). As this is a proceeding to determine the allowance of a claim and to modify a plan, this is a core proceeding under 28 U.S.C. § 157(b). Thus, this Court has jurisdiction over this matter.

II.

FACTUAL BACKGROUND

On November 14, 2003, the Debtor filed a Chapter 13 bankruptcy. Debtor's first Chapter 13 plan proposed a "cramdown" of GMAC's claim from \$16,610.00 to \$7,900.00. On December 19, 2003, GMAC objected to the proposed treatment of its claim. GMAC argued that the value of its collateral was \$10,790.00 and Debtor's Chapter 13 plan under valued the collateral.

On February 13, 2004, Debtor filed an amended Chapter 13 plan which resolved GMAC's objection. Debtor's amended plan proposed to "cramdown" GMAC's claim to \$10,790.00 and to repay this amount as a secured claim at ten (10%) percent interest. The balance of GMAC's claim was treated as a general unsecured claim.

On March 11, 2004, Debtor's amended plan was confirmed. GMAC signed off on the order confirming plan.

At the time Debtor purchased her vehicle from GMAC, she also purchased an insurance policy through the American Heritage Life Insurance Company. The policy provided that in the event of disability, the insurance would make Debtor's car payments to GMAC. Around the time Debtor's case was confirmed, Debtor suffered some type of disability and subsequently filed a claim with the American Heritage Life Insurance Company. On November 19, 2004, American Heritage Life distributed \$4,111.64 to GMAC. The check to GMAC indicates "partial payment settlement 3/10/04 -12/13/04." GMAC will continue to receive monthly payments from American Heritage Life for as long

as Debtor is disabled.

From March through December, GMAC also received payments through Debtor's Chapter 13 amended plan. Debtor's amended plan provided for monthly payments of \$281.20 to GMAC, and, as of December 6, 2004, the Trustee had disbursed \$2,704.68 to GMAC.

On December 14, 2004, Debtor filed an objection to the proof of claim of GMAC. Debtor requested that "GMAC file an amended claim reflecting the payments received from the American Heritage Life Insurance Company and that the Trustee shall cease future disbursements to creditor effective January 1, 2005 . . ." On December 15, 2004, Debtor also filed a post-confirmation plan modification. The plan modification proposed that: (1) the Trustee cease disbursements on GMAC's secured and unsecured claims; (2) some plan payments be excused; (3) as a result of Debtor's disability, plan payments be decreased; and (4) the plan be increased in length from 42 months to 60 months.

On January 14, 2005, GMAC filed a response to Debtor's objection to GMAC's proof of claim. In its response, GMAC admitted that it continues to receive payments from American Heritage Life Insurance Company and the Chapter 13 trustee, but stated that it is entitled to payments from both the disability insurance policy and from American Heritage Life until its claim in the amount of \$16,861.98, plus twelve (12%) percent interest is fully satisfied.

On February 8, 2005, GMAC filed an "Objection to Notice of Post-Confirmation Plan Modification". GMAC's objection stated that Debtor could not modify its plan to terminate Trustee payments to GMAC stating:

GMAC is the beneficiary under the American Heritage Life Insurance Policy and is entitled to receive those payments in addition to the payments that are required by Debtor under the confirmed plan. GMAC is entitled to receive payment in full of its entire claim.

On February 24, 2005, a hearing was held on Debtor's objection to GMAC's claim and Debtor's proposed post-confirmation plan modification. At the hearing, Debtor argued that the amount of GMAC's claim was established by the order confirming Debtor's Chapter 13 amended plan, and that order did not permit GMAC to continue to collect plan payments to apply to the secured claim and disability insurance payments to apply to the unsecured claim. Debtor argued that she cannot continue to make her plan payments as originally scheduled because of reduced income due to her disability and, therefore, the disability payments should replace the payments the Trustee was making under the plan. GMAC responded that, as the beneficiary of the insurance policy, GMAC may apply the payments however it chooses, and Debtor must continue to make her plan payments.

At the conclusion of oral argument, the Court sustained Debtor's objection to the proof of claim of GMAC and approved Debtor's proposed plan modification. On March 9, 2005, the Court entered an order modifying the Chapter 13 amended plan and an "Order Sustaining Objection to Proof of Claim of General Motors Acceptance Corporation". The order sustaining objection to proof of claim required GMAC to apply all payments received from the American Heritage Life Insurance to the Class V secured claim. The order modifying chapter 13 amended plan ordered the Trustee to cease disbursements to GMAC on either its Class V (secured) or Class VIII (unsecured) claims.

On March 18, 2005, GMAC filed its Motion for Reconsideration of Order Sustaining Objection to Proof of Claim of General Motors Acceptance Corporation. On April 14, 2005, at the request of the Court, Debtor filed a response to GMAC's Motion .

III.

STANDARD FOR MOTION FOR RECONSIDERATION

Under Local Rule 9024-1, a motion for reconsideration should be granted if the movant demonstrates that the Court and the parties have been misled by a palpable defect *and* that a different disposition of the case must result from a correction of such palpable defect. A motion that merely presents the same issues already ruled upon by the Court, either expressly or by reasonable implication, shall not be granted.

IV.

ANALYSIS

A. Debtor's Objection to the Claim of GMAC

The first issue for reconsideration is whether the Court erred in granting Debtor's objection to GMAC's claim. Debtor objected to GMAC's claim upon discovering that: (1) GMAC was receiving payment both from the disability insurance company and through Debtor's chapter 13 plan; and (2) GMAC was applying the payments from the insurance company to the unsecured portion of its claim. Debtor's objection seeks a judicial determination that the insurance payments must apply to GMAC's secured claim and a clarification as to the balance owed on the claim. Debtor asserts that GMAC is not entitled

to payment on its original claim amount of \$16,861.98 but is instead limited to the negotiated cram down amount of \$10,790.00 with the balance being treated as an unsecured claim as is set forth in Debtor's plan. GMAC responds that the proceeds of Debtor's insurance policy are not property of the estate and, therefore: (1) it is entitled to payment in full of its claim of \$16,861.98; and (2) GMAC may apply the insurance payments to the unsecured portion of its claim, while still receiving plan payments and applying them on the secured portion of its claim.

The validity of Debtor's objection turns on whether the disability payments are property of the estate as defined in 11 U.S.C. § 541 and 11 U.S.C. §1306. Property of the estate in a Chapter 13 case is defined by 11 U.S.C. § 1306(a)(2):

(a) Property of the estate includes, in addition to the property specified in section 541 of this title –

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

The case law is split on the issue of whether proceeds of an insurance policy (as opposed to the policy itself) are property of the estate. Courts have applied the concept of property of the estate broadly in many instances. See *Bradt v. Woodlawn Auto Workers (In re Bradt)*, 757 F.2d 512, 515 (2d Cir. 1985)(citing H.R.Rep. No. 595, 95th Cong., 1st Sess. 368 (1977))(holding that broad definition of "proceeds" under 11 U.S.C. § 541(a)(6) encompasses insurance proceeds that simply represent a "conversion in form of property of the estate"); *In re Suter*, 181 B.R. 116, 120 (Bankr. N.D. Ala. 1994) (observing that, "[f]rom a secured creditor's perspective, property insurance is a substitute for the collateral

insured"); *In re Jones*, 179 B.R. 450, 454 (Bankr. E.D. Pa. 1995)(home insurance proceeds constitute liquidated property of the bankruptcy estate); *But see, In re McAteer*, 985 F.2d 114 (3rd Cir.1993) (proceeds of credit life insurance policy which creditor collected after debtor dies were property of creditor beneficiary of policy, and not property of bankruptcy estate which owned policy); *In re Goodenow*, 157 B.R. 724 (Bankr. D. Me. 1993)(proceeds of a disability policy were not property of the estate).

This Court finds that, in a chapter 13 case, a debtor's post-petition income from employment is property of the estate and, if a debtor's post-petition income from employment is replaced by income from a disability policy, that disability income is also property of the estate. In the instant case, Debtor obtained a disability insurance policy to guaranty payment of her car payments in the event a disability caused a reduction in her wages. The purpose of Debtor's disability policy was to replace her income. The disability policy at issue was intended to protect both Debtor, by insuring that she could have the use of her car in the event that she became disabled, as well as GMAC, by guarantying its payment in event that Debtor became disabled. In the context of a disability insurance policy on a car, the proceeds act as a substitute for the insured's regular income, from which the insured makes her monthly payment. Therefore, the proceeds of the disability policy at issue are property of the estate. *Accord, In re Stevens*, 130 F.2d 1027, 1030 (11th Cir. 1997). Since disability proceeds are property of the estate, GMAC must apply the payments pursuant to the terms of the confirmed plan pursuant to 11 U.S.C. § 1327 (confirmed plan binding on the parties).

GMAC relies on the case of *First Fidelity Bank v. McAteer*, 985 F.2d 114 (3d Cir. 1993) to support its position that the proceeds of Debtor's insurance policy are not property of the estate and not subject to the terms of the Chapter 13 plan. In *McAteer*, the Debtor purchased a truck using a bank loan. As security for the loan, the debtor purchased a credit life insurance policy under which, in the event of the debtor's death, the insurer would pay the bank the amount of debt remaining according to schedule of indebtedness, plus up to two months arrearage. Later, the debtor filed for bankruptcy under chapter 13 and the bank's secured interest in the truck was "crammed down". The debtor died after confirmation of his plan and the bank recovered the full amount of its debt outstanding at the time of death from the credit life insurance policy. The bankruptcy court ordered all proceeds in excess of the "crammed down" amount turned over to the debtor's estate. The Court of Appeals reversed, finding that the insurance proceeds were not property of the estate.

This Court finds that the *McAteer* case is distinguishable from the instant case because, in this case, the purpose of the insurance is not to pay off a debt owed on collateral, but rather, to replace income. Replacement income is property of the estate in a chapter 13 bankruptcy proceeding. Furthermore, in *McAteer*, the payment of the insurance proceeds to the creditor had no impact on the debtor's ability to complete her plan. The credit life policy paid off the balance owed on the vehicle, thereby relieving the debtor of the obligation to continue making plan payments on the vehicle. In the instant case, GMAC seeks to receive both the disability insurance proceeds *and* the plan payments on its

claim. This double payment is not a result contemplated by either the Code or the *McAteer* decision.

GMAC's argument that it is entitled to both plan payments and payments pursuant to the disability policy also distinguishes this case from *In re Goodenow*, 157 B.R. 724 (Bankr. D. Me. 1993). In *Goodenow*, the debtor became disabled after confirmation of his plan. GMAC received payment on its claim from a disability policy purchased by the debtor. After GMAC received the "crammed down" value of its secured claim, GMAC sought a determination from the court that it could continue to receive the disability payments to the full value of its claim, rather than receiving the reduced amount GMAC would receive through the plan on its unsecured claim. The *Goodenow* court held that the proceeds of the insurance policy were not property of the estate and, therefore, GMAC could collect the full value of its claim. This Court disagrees with the *Goodenow* court's holding that disability insurance proceeds in the context of a chapter 13 case are not property of the estate. In a chapter 13 case, the nature of a disability policy is to replace a debtor's income and a debtor's income is property of the estate under § 1306(a)(2). However, even assuming *arguendo* that this Court agreed with the rationale of the *Goodenow* court, *Goodenow* is distinguishable from the instant case because, in *Goodenow*, prior to bringing the issue of the remaining claim before the court, GMAC was receiving payment solely from the insurance policy, not from the policy *and* the plan as GMAC seeks in this case. In *Goodenow*, the court's ruling that GMAC could continue to collect the insurance payments had no impact on the debtor's ability to complete his plan.

In the instant case, if the Trustee must continue to distribute on GMAC's claim, Debtor's plan would become underfunded and doomed to failure.

In summary, this Court finds that Debtor's disability insurance proceeds are property of the estate and Debtor's disability insurance policy replaces the employment income which was funding Debtor's plan payment to GMAC. For this reason, GMAC is required to apply the payments to the secured claim as valued in Debtor's confirmed plan. There is no palpable defect in this Court's ruling that GMAC must amend its claim to reflect the balance owed on the secured portion of the claim, the secured claim being \$10,790.00, less all plan payments and insurance payments to date.

B. Debtor's Proposed Post-Confirmation Plan Modification

When Debtor filed her chapter 13 case, she was employed by Blue Cross Blue Shield with net take-home pay of \$2,521.58. Debtor subsequently become disabled, necessitating the post-confirmation plan modification. The plan modification stated that Debtor had a reduction *in income* and was receiving social security disability income (Paragraph 1, Proposed Plan Modification). Because of the reduction in income, the Debtor sought to decrease her plan payment from \$327.60 bi-weekly to \$180.00 bi-weekly and to extend the life of the plan. The plan modification also proposed that the Trustee stop distributing to GMAC because GMAC was receiving payment directly from the insurance company. GMAC objected to the plan modification on the grounds that it is entitled to receive plan payments and payments from the disability insurance policy. Specifically, GMAC objected to the plan modification to the extent that:

it provides in paragraph four to cease disbursements on Class Five and Class Eight claim of General Motors Acceptance Corporation. GMAC is the beneficiary under the American Heritage Life Insurance policy and is entitled to receive those payments in addition to the payments that are required by the Debtor under the confirmed plan.

(Page 1, Objection to Notice of Post-Confirmation Plan Modification).

Post-confirmation plan modifications are governed by 11 U.S.C. § 1329, which states:

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to –

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payments; or

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.

(b)(1) Section 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.

(2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

(c) A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

Pursuant to 11 U.S.C. § 1329, the trustee or a party whose rights are adversely affected by the modification may object to the modification on the grounds that the modification renders the plan out of compliance with the requirements for plan

confirmation. 11 U.S.C. § 1329(b)(1). Parties, however, may not raise an objection with respect to aspects of the plan that have not changed or issues that could have been raised at the confirmation hearing. The confirmed plan is res judicata as to all such issues. 8 Lawrence P. King, *Collier on Bankruptcy*, § 1329.03(15th ed. rev. 2005).; *In re Evora*, 255 B.R. 336 (D. Mass. 2000)

This Court finds that Debtor's proposed plan modification satisfies 11 U.S.C. § 1329. The plan modification properly seeks to reduce the amount Debtor contributes bi-weekly to her plan, to extend the life of the plan, and to substitute the insurance payments for payments from the Trustee to GMAC.

This Court also rejects GMAC's objection to the proposed plan modification. GMAC is not entitled to receive both payments from the insurance company and payments under the plan. Debtor's plan modification is proper because it does not change the value of GMAC's claim as negotiated by the parties prior to plan confirmation nor does the plan modification delay payment to GMAC. Since GMAC is receiving the disability insurance payments precisely because Debtor does not have employment income, the Trustee cannot be required to disburse payments from income Debtor no longer has available to fund her plan. In essence, the Debtor's plan modification is providing for direct payment of GMAC's claim rather than payment through the Trustee's office. If, at some point in the future, GMAC stops receiving direct payment, GMAC has the right to move for a lift of stay or whatever remedy it chooses.

Since the proposed plan modification complies with 11 U.S.C. § 1329, there is no palpable defect in the Court's ruling and the motion for reconsideration is denied.

V.

CONCLUSION

For the above-stated reasons, the Court DENIES GMAC's motion for reconsideration. GMAC has not demonstrated that the Court and the parties have been misled by a palpable defect *and* that a different disposition of the case must result from a correction of such palpable defect.

/s/

Marci B. McIvor
United States Bankruptcy Judge

Dated: April 29, 2005

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